

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

Jointly Administered

**OBJECTION OF KENTUCKY RIVER PROPERTIES LLC AND
TIMBERLANDS, LLC TO THE DEBTORS' NOTICES OF (A) POTENTIAL
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES AND (B) CURE AMOUNTS**

Kentucky River Properties LLC and Timberlands, LLC (“Lessors”), by counsel, file this objection (the “Objection”) to the Debtors’ Second and Third Notices of (A) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (B) Cure Amounts (docket items 1081 and 1136) (the “Cure Notices”), in which the Debtors have identified certain landlords and amounts that must be paid in order to cure all prepetition defaults and pay all amounts accrued under the Potentially Assigned Agreements (as defined in the Cure Notices), in the event that such agreements are assumed and assigned to a Successful Bidder (as defined in the Cure Notices). The Lessors are included as landlords with Potentially Assigned Agreements and they hereby object (the “Objection”) to the Debtors’ proposed cures as indicated in the Cure Notices, and in support of its Objection, the Lessors state the following:

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Timberlands, LLC*

RELEVANT FACTS

1. On May 12, 2015 (the “Petition Date”), the above-captioned Debtors (the “Debtors”) filed in this Court voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code. Lauren Land Company (“Lauren”) is the Debtor in case no. 15-33953-KRH. Enterprise Mining Company (“Enterprise”) is the debtor in case no. 15-33960.

2. The Debtors continue in possession of their property and continue to operate and manage their businesses as Debtors-in-Possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. Kentucky River Properties LLC (“KRP”) and Lauren are parties to a lease agreement as may have been amended from time to time, pursuant to which KRP leases to Lauren certain real property (the “KRP/Coalgood Lease”). Timberlands, LLC (“Timberlands”) and Enterprise are parties to a lease agreement that may have been amended from time to time, pursuant to which Timberlands leases to Enterprise certain real property (the “Timberlands/Roxana Lease”). KRP and Enterprise are parties to a lease agreement that may have been amended from time to time, pursuant to which KRP leases to Enterprise certain real property (the “KRP/Roxana Lease”) (the KRP/Coalgood Lease, the Timberlands/Roxana Lease, and the KRP/Roxana Lease, collectively, the “Leases”).

4. On or about December 14th and 17th of 2015, the Debtors served upon KRP and Timberlands the Cure Notices.

OBJECTION

5. The Debtors’ Cure Notices appear to propose the possible assumption and assignment of the Leases. KRP and Timberlands object to the Cure Notices to the extent that the Debtors propose to assume, divide up, and then assign to different purchasers parts of the individual leases. Each lease should be assumed and then assigned as a whole, with each lease

going to a single purchaser. All of the terms, conditions, and obligations arising under each of the unexpired Leases should be cured prior to assumption and assignment. Further, in each assumption and assignment of the Leases, the permits arising under the Leases should not be separated from their respective Leases.

6. The Cure Notices propose that the required cure amount due to the Lessors prior to lease assumption pursuant to 11 U.S.C. § 365(b) are in the following amounts:

KRP/Coalgood Lease	\$0.00
KRP/Roxana Lease:	\$279,526.65
Timberlands/Roxana Lease	\$1,501.00.

The Lessors assert that the attached Exhibit A reflects the proper amounts due to the Lessors prior to any assumptions of the Leases. In sum, KRP asserts that the cure for the KRP/Coalgood Lease totals \$250,000.00 and the cure for the KRP/Roxana Lease totals \$642,067.40. Timberlands asserts that the cure for the Timberlands/Roxana Lease totals \$3,243.51.

7. In addition to these liquidated and known cure amounts, any and all tax obligations that have accrued but that have not been billed must be addressed and provided for in any final asset purchase agreement utilized in this sale process.

8. Beyond tax and royalty obligations due to the Lessors under the terms of the Leases, the Leases also impose numerous contribution, reimbursement, reclamation, and indemnification obligations, including those arising out of the Debtors' environmental obligations due under the Leases. Such obligations are not quantifiable as of the date of this filing. While those amounts remain unliquidated or may not even be known today, those obligations must be cured and adequate assurance that those obligations will be performed by any

proposed lessee through this process must be provided to the Lessors prior to any assignment by the Debtors.

9. As is acknowledged in the Cure Notices, prior to any assumption or assignment of the Leases in these bankruptcy cases, the Debtors are required by 11 U.S.C. § 365(b)(1) to provide adequate assurance (a) that the Debtors will promptly cure all defaults under the Leases to be assumed and assigned and (b) of the future performance of a proposed assignee under the terms of an unexpired lease sought to be assumed and assigned. Adequate assurance of future performance is not due at this time, but the Lessors reserve all of their rights in that regard.

10. The Leases may not be assumed and assigned in parts; rather, all of the benefits and all of the burdens must either be assumed or rejected. If the Debtors assume executory contracts such as the Leases, the Debtors must assume all of the related parcels, permits, and obligations. *See Shangra-La, Inc. v. Three Sisters Partners, L.L.C.*, 176 F.3d 843, 849 (4th Cir. 1999) (citing *Adventure Resources, Inc. v. Holland*, 137 F.3d 786, 798 (4th Cir.), cert. denied, 117 S. Ct. 404 (1998)) (“When the Debtor assumes its unexpired lease . . . it assumes it *cum onere*—the debtor must accept the obligations of the executory contract along with the benefits.”).

11. The Leases provide that mining and related operations on the leased premises shall be conducted in conformity with all state and federal laws with due regard to the future value of the leased premises, and in conformity with all state and federal environmental laws. The Lessors seek assurances that operations conducted by any proposed lessee pursuant to the terms of the Leases will comply with all obligations due from the lessee to the Lessors.

12. Finally, while the Leases require the Lessors’ consent to any assignment of the Leases, section 365 of the Bankruptcy Code permits assignment of the Leases by the Debtors

without the Lessors' consent if the Debtors comply with the requirements of section 365. The Lessor's willingness to comply with the bankruptcy process in these bankruptcy cases should not, in any way, be treated as consent to any future assignments of the Leases. The Lessors' consent rights under the Leases are hereby expressly preserved.

WHEREFORE, Kentucky River Properties LLC and Timberlands, LLC respectfully object to the Cure Notices and request (i) that the Debtors be required to assign each lease as a whole, and assign each Lease to a single purchaser; (ii) that the Debtors be required to pay the full amount of the tax obligations due under the Leases; (iii) that any and all accrued tax obligations, whether or not they have been billed, are addressed and provided for in any final asset purchase agreement approved for this sale process; (iv) that the Debtors' assumption of the Leases be conditioned upon the satisfaction of all cure obligations, liquidated or unliquidated, including those related to the Debtors' contribution, reimbursement, reclamation, and indemnification obligations (including environmental obligations) arising out of the Leases; (v) that the Debtors be required to assume and assign all of the benefits as well of the burdens of the Leases each to a single assignee; (vi) that there be a proper showing of adequate assurance of future performance by any such assignee, including the assignee's ability to perform under all of the terms, conditions, permits, and other obligations of the Leases; (vii) that any proposed lessee has the ability to mine in compliance with all applicable state and federal environmental laws; and (viii) that the Lessors' consent rights arising out of the terms of the Leases are hereby expressly preserved; and (ix) such other and further relief as this Court deems just and proper.

Date: January 11, 2016

**KENTUCKY RIVER PROPERTIES LLC
AND TIMBERLANDS, LLC**
By Counsel



/s/ Jennifer M. McLemore

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*Counsel for Kentucky River Properties LLC and
Timberlands, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2016, a copy of the foregoing was served by email or mail on the parties shown on the attached exhibit A (as required by the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (Docket No. 111)) and on the following parties by first class mail:

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Exhibit A

Exhibit A to Objection of Kentucky River Properties LLC and Timberlands, LLC to the Debtors' Notices to (A) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (B) Cure Amounts						
Lessee	Balance	Other Items	Aug-15 Royalty	Jul-15 Royalty	2014 surface tax billed	7/29/2015
<u>Kentucky River Properties LLC</u>						
<u>Roxana Complex Enterprise Mining Company Lease</u>						
Alpha Natural Resources	\$ 241,950.69			\$ 201,009.69	\$ 40,941.00	
2015 estimated unmined coal taxes	374,681.67	374,681.67				
2015 estimated surface taxes	25,435.04	25,435.04				
Kentucky River/Roxana/Enterprise Total Cure Due:	642,067.40	400,116.71	-	201,009.69	40,941.00	
<u>Coalgood Complex/Lauren Land Company Lease</u>						
2016 Coalgood Minimum Cure Due	250,000.00	250,000.00				
<u>Timberlands, LLC</u>						
<u>Roxana Complex Enterprise Mining Company Lease</u>						
Alpha Natural Resources	\$ 1,501.00			\$ 1,501.00		
2015 estimated surface taxes	1,742.51	1,742.51				
Timberlands/Roxana/Enterprise Total Cure Due:	3,243.51	1,742.51	-	-	1,501.00	
Total cure due:	\$895,310.91	\$ 401,859.22	\$ -	\$ 201,009.69	\$ 42,442.00	

Exhibit B

MVJ/2002

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Prothonotary	Wood Brothers Inc	Pete G. Zimmerman	ROYALTY COMPLIANCE DIVISION 122 W 14TH ST 3RD FL WEST 223 E. City Hall Ave Ste 201	WY CHEYENNE ND	82000-2600 23510	757-622-0090
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